



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 10946-07
23 June 2008

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Navy Reserve, filed an application with this Board requesting, in effect, that his record be corrected to show that he transferred to the Retired Reserve and to the Retired List vice being discharged on 16 April 1988.

2. The Board, consisting of [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 3 June 2008 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and consider the application on its merits.

c. Petitioner initially enlisted in the Navy on 23 November 1964 with about 20 months of prior service in the Army Reserve. On 3 April 1978 he requested discharge from the Navy because his religious beliefs did not allow him to serve in the military. After review, the Bureau of Naval Personnel (BUPERS) directed discharge because he was a conscientious objector. He was so discharged on 25 October 1974. At that time, he was credited with almost 14 years of active service.

d. On 17 April 1982 Petitioner reenlisted in the Navy

Reserve for 6 years as a petty officer first class (AZ1; paygrade E-6). Since individuals previously discharged because they were a conscientious objector are not normally allowed to reenlist, BUPERS directed that he be processed for separation due to a fraudulent enlistment. On 20 May 1984, an administrative discharge board found that he had not intentionally concealed his prior discharge by reason of conscientious objection and concluded that he had not fraudulently enlisted in the Navy Reserve. Consequently, he was retained in the Navy Reserve.

e. On 16 April 1988 Petitioner completed six continuous qualifying years of service for Navy Reserve retirement. This service when combined with his service in the Army Reserve and the Regular Navy resulted in 20 years of qualifying service for reserve retirement. He was honorably discharged on 16 April 1988 at the expiration of his enlistment.

f. Petitioner became 60 years old on 30 April 2005 and requested his retired pay. After review, his request was approved and he is now receiving his retired pay as a former member.

g. The Board did not request an advisory opinion in this case. However, the Board is aware that the Navy Personnel Command has routinely recommended corrective action when an individual is qualified for reserve retirement and circumstances resulted in discharge rather than transfer to the Retired Reserve.

h. The Uniform Retirement Date Act, 5 U.S.C. 8301, requires that the effective date of any retirement be the first day of the month.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Petitioner was in good standing in the Navy Reserve and had completed 20 years of qualifying service. Further, he is now receiving his retired pay as a former member. Given the circumstances, the Board concludes that Petitioner's record should be corrected to show that he transferred to the Retired Reserve in the grade of petty officer first class. Given the requirements of the Uniform Retirement Date Act, the retirement should be effective on 1 April 1988 vice the discharge of 16 April 1988 now of record. Since he is now 60 years old, the record should be further corrected to show that he transferred to the Retired List on 30 April 2005, his 60th birthday.

The Board further concludes that this Report of Proceedings

should be filed in Petitioner's naval record so that all future reviewers will understand his status in the Retired Reserve.

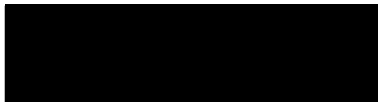
RECOMMENDATION:

a. That Petitioner's record be corrected to show that he transferred to the Retired Reserve effective on 1 April 2005, in the grade of petty officer first class, vice the discharge of 16 April 1988 now of record.

b. Petitioner's record should then be corrected to show that he transferred to the Retired List on 30 April 2005, his 60th birthday.

c. That this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

